IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.V.K.BALI
&
THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

WA.No. 870 of 2005(B)

AGAINST THE JUDGEMENT IN OP.31502/2000
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APPELLANT:
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1. STATE OF KERALA,
   REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

2. DISTRICT COLLECTOR, IDUKKI.

3. SUB COLLECTOR, DEVIKULAM.

BY SPL.GOVERNMENT PLEADER(FOREST) SMT.SUSHEELA R.BHAT

RESPONDENTS:
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1. MAJOR GENERAL K.A.S. RAJA (RETD),
   S/O. LATE K.S.ALAGA RAJA, CONGEYA,
   SRIRANGAPALAYAM RAJAPALAYAM, VIRUDHUNAGAR DISTRICT
   TAMILNADU.

2. K.S.R.SRIRANGA RAJA,
   SRIRANGABHAVANAM, TANKASI ROAD, REJAPALAYAM.

3. K.A.PADMAVATHY AMMAL,
   W/O. LATE K.A.A.RAJA, IAS, 164, T.P.MILLA ROAD,
   RAJAPALAYAM.

4. DR.KA.A.RAMASUBRAMANIA RAJA,
   S/O. LATE K.A.A.RAJA, -DO-.

5. M.S.VIJAYALAKSHMI,
   D/O. LATE K.A.A. RAJA -DO-.

6. M.R.MARAGATAVALLI,
   S/O. LATE K.A.A. RAJA -DO-.

7. JAMUNA, W/O. LATE K.A.VIVEKANANDA RAJA,
   T.P. MILLA ROAD, RAJAPALAYAM.

8. DR.VIGNESH RAJA,
   S/O. VIVEKANANDA RAJA -DO-.

9. MISS. K.V.PADMAVATHI, D/O. -DO-.

10. RATHNAMMAL,
W/O. LATE K.P. JAYARAM RAJA, THENKASI ROAD,
RAJAPALAYAM.

11. SANTHI, D/O.LATE K.P.JAYARAM RAJA,
TENKASI ROAD, RAJAPALAYAM.

12. K.J.RAVICHANDRA RAJA,
S/O. LATE K.P.JAYARAM RAJA, THENKASI ROAD,
RAJAPALAYAM.

13. VIDHYAM,
D/O. LATE K.P.JAYARAM RAJA -DO-.

14. K.J.SRIRANGAPERUMAL RAJA,
S/O. LATE K.P.JAYARAM RAJA, THENKASI ROAD,
RAJAPALAYAM.

BY SR. ADV. SRI THYAGARAJAN.
SRI.C.K.VIDYASAGAR
SRI.T.I.ABDUL SALAM
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 8/12/2006, THE COURT ON 21/12/2006, DELIVERED THE FOLLOWING:

V.K.BALI, C.J. & P.R.RAMAN,J.

W.A.NO.870 OF 2005

Dated this the 21st day of December, 2006

JUDGMENT

Raman,J.

State of Kerala and 2 others are the appellants herein. The appellants impugn the judgment dated 27/4/2004 in O.P.No.31502/2000 rendered by the learned Single Judge. The facts briefly stated are as follows:

2. Respondents as petitioners filed the original petition before this Court seeking to quash Ext.P3 and for a direction to the respondents (appellants herein) to pass an award determining the compensation in respect of the petitioners unregistered holders of cardamom plantation in Malappara Village in accordance with law. Respondents

were having right and possession of an extent of 52.88 acres of land in Sy.No.11/1, 11/2 and 10 of Malappara Village in Peermade Taluk. They were also in possession of 27 hectares of unregistered area surrounding the registered holding since 1095 M.E. and according to them, the same was developed for cardamom plantation. The State notified an extent of 52.88 acres of for Periyar Valley Tiger Project and the surrounding Government land, which was developed for cardamom plantation, was taken possession. Compensation due and payable to the registered holding was awarded. Dissatisfied with the compensation awarded the claimants approached the reference court under the provisions of the Land Acquisition Act as LAR.No.40/96 and the reference court awarded enhancement of compensation. The

said award was challenged before this Court which was modified and reduced the compensation. The matter was then taken up before the Supreme Court in Civil Appeal No.2001/92, which was decided by the Apex Court by Ext.P1 order and became final. However, in respect of the unregistered holding having an extent of 27 hectares the respondents were not awarded any compensation. So they filed O.P.No.5677/90. This Court directed to pay compensation following the Government Order G.O.(P). No.289/68/Agrl. dated 7/6/1969. Pursuant thereto Ext.P3 order was passed awarding compensation of Rs.2,35,318/- with interest thereon from 7/5/1984. Dissatisfied with the same, the present writ petition was filed. The decision of this Court in O.P.No.5677/1990 was challenged in

W.A.No.1209/2005 with a petition to condone the delay of 2683 days and the writ appeal and the delay petition were dismissed by judgment dated 1st September, 2006 and thus the judgment became final. Hence, what remains to be considered is regarding the adequacy of the compensation awarded in respect of the unregistered holding. The learned Single Judge found in paragraph 4 of the judgment impugned in this appeal that the respondents herein (petitioners in the original petition) admittedly were in possession of 27 hectares of unregistered holding from 1095 M.E. onwards and they had developed the land and planted cardamom and at the time of taking possession by the State, it was yielding. The Revenue Divisional Officer, who inspected the place, submitted a report and the relevant portion

of the report was also extracted in the judgment. The report states that the respondents herein have a claim for compensation for the cardamom plants in the encroached area. The learned Single Judge further found based on the report of the Revenue Divisional Officer that the unregistered holding also had been cultivated with cardamom and there was yield from the plants. This Court by Ext.P2 judgment in O.P.No.5677/90 as already referred to above, directed to pay compensation in accordance with G.O.(P) No.289/68/Agrl. dated 7/6/1963. This is also extracted in the judgment under appeal. Taking note of the circular, it was found that the compensation should have been awarded to the respondents herein in respect of the unregistered holding also when they

were dispossessed by the State. From Ext.P2 judgment which became final, it is seen that even in respect of the unregistered holding respondents herein are entitled for compensation, when they were dispossessed by the State. This Court, after referring to the order of the Apex Court (Ext.P1), found that the said order can be followed in fixing the compensation in the present case also by taking an appropriate lesser multiplier, as the land in question was unregistered holding. Accordingly, the learned Single Judge set aside Ext.P3 order and directed the authorities to fix the compensation in accordance with the guidelines in Ext.P1 order.

3. The short question that arises for consideration is whether the judgment of the learned Single Judge directing the

authorities to fix the compensation less value of the land in accordance with the guidelines of the Apex Court suffers from any errors of law.

4. G.O.(P).No.289/68/Agrl. dated 7/6/1963 is an order passed by the Government of Kerala, paragraph 1 of which reads as follows:

> "The Government have considered the recommendations of the Consulative Committee of Parliament on Kerala Legislation on the report of the Sub Committee (The Maniyangadan Committee) on the question of eviction of encroacher, etc., from Government forest lands and are pleased to issue the following orders:"

In paragraph 2(a) it is stated thus:

> "The Sub Committee has recommended that any attempt to draw a distinction between the encroachers and lessees on the one hand and encroachers before and after a particular date (i.e. 1/1/1960) will only lead to further confusion."

5. It was also stated that the Sub Committee has recommended that all resident cultivators should be treated on the same footing irrespective of the time or manner, they came to possession. Paragraph 2(f) of the said Government Order, which is relevant, is also extracted hereunder:

> "2(f). The Sub Committee has recommended that for all the improvements compensation as per the Land Acquisition Act less 15% solatium or the compensation as per Tenants Improvements Act should be paid to all persons who are evicted. As regards the paddy lands, the cost of converting the land into paddy land should be paid."

6. Thus, it can be seen that the compensation payable to the encroachers is to be paid as per the Land Acquisition Act less 15% solatium of the compensation as per the Tenants Improvements Act. The learned Single Judge, in such circumstances, has

followed the guidelines as per Ext.P1 order arising out of the Land Acquisition case and directed the appellants to pay the same. There is no error of law to justify interference.

We find no merits in this appeal and the same is dismissed.

V.K.BALI,
CHIEF JUSTICE.

P.R.RAMAN,
JUDGE.

kcv.